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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,834	12/21/2001	Brian G. Morin	5389	4942

7590                    09/22/2004  
Milliken & Company  
P.O. Box 1927  
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/036,834	MORIN ET AL.
	Examiner Cheryl Juska	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06/30/04.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 4-12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed June 30, 2004, has been entered. Claims 1-3, 13, and 14 are cancelled, while claims 4, 7, and 10 are amended as requested. Thus, the pending claims are 4-12.
2. The terminal disclaimer filed June 30, 2004, is sufficient to withdraw the double patenting rejection of claims 4-12 over claims 1-25 of US 6,541,554 issued to Morin.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 4, 5, 7, 8, 10, and 11 are rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of JP 2001-081628 issued to Inoue.

As noted in previous actions, Fujishita teaches the presently claimed invention with the exception of the amount of nucleating agent. Applicant has amended the amount of nucleating agent to a range of about 10 ppm to about 800 ppm. Since Connor teaches nucleating agent amounts of 1000 – 3000 ppm, the rejection based upon Connor is withdrawn. However, Inoue is now relied upon to teach a nucleating amount of 500 – 2000 ppm for a woven primary backing fabric made of tape yarns. Thus, the claimed amount is known in the art and it would have been obvious to one skilled in the art to employ said known amount in order to produce the stabilized backing fabric of Fujishita.

With respect to the claimed heat shrinkage rates (measured after 5 minutes) and scattering peak, Fujishita and Inoue do not explicitly teach said values. However, it is asserted that the claimed properties would be met by the combination of the teachings of Fujishita and Inoue. Support for said assertion is found in the use of like materials (i.e., polypropylene tape fibers comprising 500-800 ppm of a nucleating agent such as DBS or a derivative thereof) and like processes (i.e., formation of slit film tape yarns). It is also asserted that said properties are dependent upon polymer composition and crystallinity thereof. Since applicant's polypropylene tape yarns are made from the same composition and from the same process, said tape yarns are structurally and chemically the same as that taught by Fujishita and Inoue. Hence, it follows that the prior art tape yarn must possess the same properties as applicant's. Like materials cannot have mutually exclusive properties. The burden is upon applicant to prove otherwise.

Therefore, claims 4, 5, 7, 8, 10, and 11 are rejected as being obvious over the cited prior art.

5. Claims 6, 9, and 12 are rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of JP 2001-081628 issued to Inoue and in further view of US 5,798,167 issued to Connor et al.

Fujishita and Inoue fails to explicitly teach a nucleating agent of p-MDBS. However, Connor teaches MDBS is an equivalent nucleating agent to DBS. Hence, it would have been obvious to substitute MDBS as taught by Connor for the DBS of the Fujishita and Inoue references, since they are known in the art as equivalent nucleating agents. As such, the choice of any of these equivalents is within the level of ordinary skill in the art. Therefore, claims 6, 9, and 12 are also rejected.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

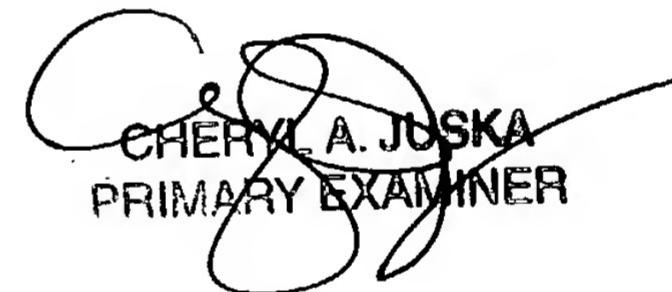
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj

September 20, 2004